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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,794	01/19/2001	Ariel Shapiro	U013219-0	1361

7590

11/25/2002

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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 11/25/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/765,794

Applicant(s)

SHAPIRO, ARIEL

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 and 33-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9, 7 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of claims 17-32 in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 1-16 and 33-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Grosshuesch (US 4513907).

4. Grosshuesch teaches a carton with plurality of ventilation apertures in a wall, as recited in claims 17 and 18 (i.e. items 27/28/32 in Figures), covered by a gas impervious layer (i.e. closure flap 64 in Figures) as recited in claim 19 (Column 1, lines 30-68, Column 2, lines 27-64).

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5. Claims 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Stollberg (US 4163494).

6. Stollberg teaches a carton with a plurality of ventilation apertures in a wall, as recited in claims 17 and 18 (i.e. items 34 in Figures), covered by a gas impervious layer (i.e. closure flap 64 in Figures) as recited in claim 19 (Column 1, lines 30-68, Column 2, lines 27-64).

7. Claims 17-21, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Esty (US Re28892).

8. Esty teaches a carton having a plurality of ventilation apertures in a wall as recited in claims 17 and 18, a gas impervious layer when sealed as recited in claim 19 (items 13 and 15 in Figures sealed by items 23 and 25, respectively), an interiorly disposed modified atmosphere bag as recited in claims 20 and 21 (Column 7, lines 19-35, Column 14, lines 6-25), produce held within the bag as recited in claims 26 and 27 (Column 2, lines 1-10).

9. Claims 17, 19, 20, 22-25, 28-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Scholz et al. (US 5505305)

10. Scholz et al. teach a bag within a carton as recited in claim 20 (e.g. item 240 of Figure 30 within 510 of Figure 31 ) both having apertures as recited in claim 17 (e.g. opening 249 when the bag 30 is positioned within carton 510 by inserting 513B into 513A in Figures 30 and 31), sealed with a gas impervious layer as recited in claim 19

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(i.e. for some food products the bag must be hermetically sealed as stated in Column 17, lines 40-48), wherein the seal is adhesive plastic tape as recited in claims 22, 23, 28 and 29 and covers both bag and carton apertures as recited in claims 24 and 25 (See tape 250 in Figure 30). Additionally, the sticker has selective permeability (i.e. impermeable) as recited in claims 30-32 since Scholz et al. teach the bag may be hermetically sealed for food products as discussed previously (Column 23, line 24-Column 24, line 29, Figures 30 and 31 Column 17, line 1-Column 22, line 34, Figures 21-24).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 22-25, 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esty (US Re28892), as applied to claims 17-21, 26 and 27 above, further in view of Floyd et al. (US 5505950).

13. Esty teaches sealing communication apertures and the bag aperture by a closure that is attached to the produce containing bag (i.e. by cutting and sealing the tubes 23 and 25, Column 2, lines 62-69), but Esty is silent in teaching the aperture is sealed with a plastic sticker, as recited in claims 22-25, 28 and 29 that has selective permeable properties as recited in claims 30-32. Floyd et al. also teach a produce bag

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within a container with an aperture (i.e. see Figure 12, Abstract) and further teach providing an adhesive, gas permeable plastic sticker to seal the bag to provide diffusion of gases during storage for items requiring respiration (Note item 34 in Figure 4, Column 9, line 20 to Column 12, line 12). Therefore it would have been obvious to modify Esty and seal the apertures on the carton and bag with an adhesive plastic sticker, as recited in claims 22-25, 28, and 29, since one would have been substituting on method of sealing a bag held within a container for the same purpose: store produce in a gas selective bag. It would have been further obvious to include a gas permeable sticker, as recited in claims 30-32, since Esty teaches produce and Floyd et al. teach produce requires respiration during storage and thus a gas permeable seal is appropriate.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nakamura (US 4790436) teaches a food bag within a carton having an aperture aligned with an aperture in the carton and being sealed by an adhesive sticker.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

17. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen 

Examiner

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November 18, 2002



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